



05 CV 9088

JUDGE COTE
DOCKET NO. 1513OCT 18 2005
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FILED CLERK'S OFFICE**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION****IN RE WIRELESS TELEPHONE SERVICES ANTITRUST LITIGATION***Jessica McClain, et al. v. Sprint Corp., et al.*, W.D. Tennessee, C.A. No. 2:05-2229**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR.,* KATHRYN H. VRATIL* AND DAVID R. HANSEN, JUDGES OF THE PANEL****TRANSFER ORDER**

Before the Panel is a motion brought, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in this Western District of Tennessee action. These plaintiffs seek to vacate the Panel's order conditionally transferring their action to the Southern District of New York for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket. Defendants in the action – Cellco Partnership d/b/a Verizon Wireless; Cingular Wireless, LLC; Sprint Corporation; and T-Mobile, USA, Inc. – along with MDL-1513 defendant AT&T Wireless Services, Inc., oppose the motion and urge inclusion of the action in the MDL-1513 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that this action involves common questions of fact with the actions in this litigation previously transferred to the Southern District of New York, and that transfer of this action to the Southern District of New York for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel further finds that transfer of this action is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Southern District of New York was a proper Section 1407 forum for actions involving allegations that the leading national wireless telephone carriers wrongfully tied the sale of wireless telephone services to the sale of telephone handsets and monopolized the market for sales of handsets to their respective subscribers, among other things. See *In re Wireless Telephone Services Antitrust Litigation*, 249 F.Supp.2d 1379 (J.P.M.L. 2003). The motion for remand to state court can be presented to and decided by the transferee court. See, e.g., *In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

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* Judges Motz, Miller and Vratil took no part in the decision of this matter.

L MICHAEL MAHON,
CLERK
BY *Jessica Soss*
DEPUTY CLERK

(28)

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IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable Denise Cote for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:

Wm. Terrell Hodges

Wm. Terrell Hodges

Chairman

FILED BY *JG* D.C.
05 OCT 31 PM 4:24
THOMAS M. GOLD
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